

Message Text

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ACTION NEA-10

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SS-15 SP-02 L-03 H-01 PA-01 ICAE-00 SSO-00
INRE-00 NSCE-00 SAA-01 /087 W
-----074342 221501Z /64

O R 221358Z AUG 78
FM AMEMBASSY TUNIS
TO SECSTATE WASHDC IMMEDIATE 2229
INFO AMEMBASSY ALGIERS
AMEMBASSY BRUSSELS
AMEMBASSY PARIS
AMEMBASSY RABAT
AMEMBASSY TRIPOLI

C O N F I D E N T I A L SECTION 1 OF 2 TUNIS 5894

BRUSSELS FOR USEC/LABATT

PARIS FOR LABATT

E.O. 11652: GDS
TAGS: PINR, ELAB, TS,
SUBJ: THE SOUSSE TRIAL - VIEW FROM THE DEFENSE

REF: TUNIS 5859

1. EMBASSY HAD OPPORTUNITY TO MEET INFORMALLY WITH HEDI BOUFARIS, ONE OF 39 SOUSSE TRIAL DEFENSE ATTORNEY AFTERNOON OF AUGUST 21. BOUFARIS IS MEMBER OF TEAM OF LAWYERS REPRESENTING PRINCIPAL DEFENDANT, EX-SECRETARY GENERAL OF SOUSSE REGIONAL UNION HABIB BEN ACHOUR, AND HE ALSO IS PARTICIPATING IN DEFENSE OF FOUR OR FIVE OTHER LOWER-LEVEL TRADE UNIONISTS. FOLLOWING IS SUMMARY OF BOUFARIS' OBSERVATIONS, WHICH WE BELIEVE ACCURATELY REFLECT VIEW OF DEFENSE TEAM IN GENERAL.
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2. BOUFARIS SAID THAT THERE WAS NO QUESTION THAT SOUSSE COURT HAD REACHED ITS AUGUST 15 DECISION INDEPENDENTLY. ALTHOUGH PRESIDENT OTLQMURT (HADJ YOUSSEF BEN YOUSSEF) ENJOYS GOOD REPUTATION AS A JURIST, HE ALSO IS KNOWN TO BE AN OLD LINE DESTOURIAN NOT INCLINED TO CAUSE TROUBLE. FOR THIS REASON, GOVERNMENT HAD

EXPECTED COURT UNDER HIS GUIDANCE WOULD MAKE "RIGHT DECISION"
I.E. THAT MOST DEFENDANTS AND CERTAINLY BEN ACHOUR AND
OOHER MAJOR FIGURES WOULD BE FOUND BUILTY AND BE GIVEN
MEDIUM-TERM JAIL SENTENCES. GOVERNMENT HAD ALSO PRESUMED
THAT COURT WOULD RESTRICT DEFENSE TO PRO FORMA DECLARATIONS
OF INNOCENCE AND THAT PUBLIC TESTIMONY WOULD BE LIMITED TO
ANSWERING QUESTIONS ABOUT SPECIFIC CRIMINAL CHARGES.

3. FROM BEGINNING, HOWEVER, TRIAL EVOLVED IN ENTIRELY
DIFFERENT MANNER. JUDGE BECAME INCREASINGLY SYMPATHETIC
TO DEFENSE CAS AND INCREASINGLY COOL TO PROSECUTION.
POOR QUALITY OF EVIDENCE AGAINST ACCUSED WAS ONE FACTOR,
ANOTHER WAS PROSECUTION'S UNAPPRECIATED TENDENCY TO
INTERFERE WITH BENCH'S PREROGATIVES. MAJOR ELEMENT, HOWEVER,
WAS THAT COURT CAME TO CONCLUSION GOVERNMENT'S CRIMINAL
CHARGES WERE UNSUBSTANTIATED AND THAT REAL ISSUE WAS POLITICAL
CONFRONTATION BETWEEN UGTT AND REGIME. IN SHORT, COURT WAS
UNWILLING TO BE USED AS GOVERNMENT HAD PREUMSED.
SENSITIVE TO POLITICAL IMPORTANCE OF CASE, COURT LACKED
COURAGE TO ACQUIT DEFENDANTS. RULING OF NON-COMPETENCE
WAS EASY WAY OUT. BE RECOMMENDING THAT CASE BE REFERRED
TO STATE SECURITY COURT, JUDGE IMPLICITLY REJECTED
OOVERNMENT'S CASE AND UPHELD DEFENSE CLAIM THAT TRIAL WAS
POLITICAL.

4. WHILE DEFENSE WOULD HAVE PRFERRED ACQUITTALS, COURT'S
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DECISION WAS BEST AND MOST REALISTIC ALTERNATIVE. ACCEPTING
THIS, DEFENSE WELCOMED RECOMMENDATION THAT STATE
SECURITY COURT TAKE UP CASE. BOUFARIS' REASONING WAS THAT
BY MOVING CASE INTO POLITICAL CONTEXT, DEFENSE CAN
(A) DISPROVE CRIMINAL CHARGES, (B) DEMONSTRATE GENERAL
STRIKE WAS DEFENSIVE REACTION TO ORCHESTRATED AND
REPEATED PROVOCATIONS, AND C) SPECIFICALLY SHOW THAT
GUILTY PARTIES ARE PSD AND MOHAMED SAYAH AND NOT UGTT
AND HABIB ACHOUR. SUCH EXPANSION OF CASE COULD NOT BE
ASSURED IN CRIMINAL COURT WHICH TEXT TIME COULD RESTRICT
PROCEEDINGS TO STUDY OF IRRELEVANT CRIMINAL CHARGES
RATHER THAN BYOADER ISSUES.

5. GOVERNMENT IS WELL AWARE OF RISKS INVOLVED BY ALLOWING
CASE TO BE BROUGHT BEFORE STATE SECURITY COURT, AND
CONSEQUENTLY ITS DECISION TO APPEAL SOUSSE TRIAL TO
COURT OF CASSATION (SUPREME COURT) WAS LOGICAL AND EVEN
MPERATIVE. IN BRIEF, BOUFARIS SAID, PS AND GOVERNMENT
SKULDUGTERY CAN BE MORE EASILY CONCEALED IF CASE IS
KEPT IN CRIMINAL RATHER THAN POLITICAL TRIBUNAL.

6. BOUFARIS CONCLUDED THAT CHANCES ARE CASSATION WILL

SIDE WITH GOVERNMENT AND RETURN CASE TO SOUSSE COURT UNDER NEW TEAM OF JUDGES. HE DID NOT DISCOUNT POSSIBILITY, HOWEVER, CASSATION COULD UPHOLD SOUSSE COURT. DECISION IS EXPECTED WITHIN WEEK, HE SAID.

7. WHATEVER ITS PREFERENCES MIGHT BE (AND WE STILL CAN'T SAY WITH CERTAINTY WHAT THEY ARE) THE GOVERNMENT ALSO SEEMS TO BE PREPARING FOR EVENTUALITY THAT SECURITY COURT MIGHT BE CALLED INTO SESSION. BOUFARIS STATED THAT MEMBERSHIP IN STATE SECURITY COURT HAS BEEN REVISED. THIS WAS CONFIRMED BY ALL PAPERS AUGUST 22, WHICH NOTED THAT MINISTRY OF JUSTICE HAD ISSUED REVISED LIST OF SECURITY COURT MEMBERS ON AUGUST 17. (NOTE: AS SECURITY COURT CAN BE ACTIVATED ANY TIME BY MINISTRY OF JUSTICE, THIS EVIDENTLY CONFIDENTIAL

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IS UPDATING OF STANDING MEMBERSHIP.) BOUFARIS HINTED THAT GOVERNMENT WAS "PACKING COURT", JUST IN CASE. WE CAN NEITHER CONFIRM OR DENY THIS EVALUATION, BUT IT MUST BE RECALLED THAT BOUFARIS IS NOT AN IMPARTIAL OBSERVER.

8. LATER SAME DAY, EMBASSY POLITICAL/LABOR OFFICER DISCUSSED TRIAL SITUATION WITH THAMEU ACHOUR, SON OF IMPRISONED FORMER UGTT LEADER. ACHOUR NOTED THAT MOST OF

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C O N F I D E N T I A L SECTION 2 OF 2 TUNIS 5894

THE NEW SECURITY COURT MEMBERS WERE SAME JUDGES AND PROSECUTORS WHO HAD CONSTITUTED THE TUNIS CRIMINAL COURT AND THE COURT OF APPEALS. HE ALLEGED THAT THE COURT WAS "PACKED AND BOUGHT OFF" BY PROMOTION PROCESS WHICH MOVED MAJORITY OF MEMBERS FROM THEIR PREVIOUS POSITIONS TO NEW STATE SECURITY COURT. ON TIMING, ACHOUR SAID THAT THE GOVERNMENT WAS NOT TIGHTLY CONSTRAINED IN ITS CHOICE OF TRIAL DATES. THE PREDICTED OPENING DATE OF AUGUST 28 WOULD LEAVE ONLY THREE DAYS FOR THE TRIAL BEFORE THE ANNOUNCED RETURN OF PRESIDENT BOURGUIBA, AUGUST 31. ACHOUR SAID GOVERNMENT IS UNDER HEAVY PRESSURE TO TERMINATE THE AFFAIR BEFORE HIS ARRIVAL. FURTHERMORE, STUDENTS RETURN TO CLASSES AROUND SEPTEMBER 15 AND GOVERNMENT WILL BE PRESENTED WITH AN INTOLERABLE SECURITY PROBLEM IF TRIALS ARE NOT COMPLETED BY THEN, ACHOUR SAID.

9. COMMENT: BOUFARIS' ANALYSIS OF SOUSSE DECISION AND GOVERNMENT'S STRATEGY SEEMS FAIRLY CONVINCING, ALTHOUGH HIS VIEWS ARE OBVIOUSLY COLORED IN FAVOR OF HIS CLIENTS. HE MAY BE EXAGGERATING, HOWEVER, EXTENT OF ADVANTAGE
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TO DEFENSE WHICH SECURITY COURT TRIAL WOULD PRESENT, AND CONVERSELY DISADVANTAGES TO GOVERNMENT'S CASE. YOUNG ACHOUR'S VIEWS SEEM TO PARALLEL THOSE OF BOUFARIS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRIALS, COURT PROCEEDINGS, LABOR UNION OFFICIALS, ATTORNEYS, DIPLOMATIC DISCUSSIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 22 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978TUNIS05894
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780343-0205
Format: TEL
From: TUNIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780835/aaaabdiu.tel
Line Count: 203
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8ac7bf5d-c288-dd11-92da-001cc4696bcc
Office: ACTION NEA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 TUNIS 5859
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1654727
Secure: OPEN
Status: NATIVE
Subject: THE SOUSSE TRIAL - VIEW FROM THE DEFENSE
TAGS: PINR, ELAB, TS, (BOUFARIS, HEDI)
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/8ac7bf5d-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014